

Minutes of Regular Meeting of November 22, 2005

CALL TO ORDER 7:35 P.M.

ROLL CALL

COUNCILMEMBERS PRESENT: Feierbach, Mathewson, Bauer, Warden

COUNCILMEMBERS ABSENT: Metropulos (arr. 8:45 P.M.)

Staff Present: Interim City Manager Crist, City Attorney Zafferano, Community Development Director de Melo, Public Works Director Davis, Finance Director Fil, Interim Assistant City Manager Gonzalez, Fire Chief Lowden, Police Chief Mattei, City Clerk Cook.

PLEDGE OF ALLEGIANCE

Led by City Clerk Cook.

SPECIAL PRESENTATIONS

Proclamation Honoring Lynn Hanlon upon her retirement from the City of Belmont

Mayor Warden read the proclamation honoring Ms. Hanlon. Chief Mattei stated that she was unable to attend the meeting, and he accepted the proclamation on her behalf.

Proclamation Honoring Derrick Lee upon his retirement from the City of Belmont

Mayor Warden read the proclamation and presented it to Officer Lee.

Proclamation in Recognition of America Recycles Day

Mayor Warden read the proclamation. City Engineer Phalen accepted the proclamation on behalf of the City. She thanked the citizens for their recycling efforts.

RECESS: 7:45 P.M. (to consider the Belmont Fire Protection District Agenda)

RECONVENE: 9:27 P.M.

COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS

Councilmember Metropulos announced that Carlmont High School girl's volleyball won the Central Coast Section Division, which they have not won since 1975. He also announced that the holiday tree lighting would take place at Carlmont Village Shopping Center at 5:00 p.m. on November 28.

Councilmember Bauer announced the Chamber of Commerce's annual holiday fundraising event on December 2. He also announced that Carlmont High School's Choral Concert would be held that evening as well.

Councilmember Mathewson reported on the County Emergency Preparedness Workshop held on November 12. He noted that attendance was greater than anticipated. He stated he attended the Emergency Operations Center (EOC) training in Belmont's new EOC on November 15. He would like to learn more about emergency preparedness, but noted that Belmont is well prepared.

Mayor Warden announced that Congresswoman Anna Eshoo has scheduled a Town Hall Meeting at 10:00 a.m. on December 3 in the City Council Chambers. He also announced that the

City Hall/Police Facility Grand Opening would be held on December 13 starting at 5:00 p.m., which will culminate in the Council Reorganization Meeting at 7:00 p.m. City Clerk Cook described some of the details of the event.

CONSENT CALENDAR

Councilmember Mathewson noted that the Consent Calendar included a resolution to terminate the Criminal Justice Council after 30 years, due to lack of funding. He noted this Council provided a great service to the County, and he thanked all the members who served throughout the years.

Councilmember Bauer requested the removal of Item 4-F (Resolution Denying a General Plan Amendment, Conceptual Development Plan Amendment, and Vesting Tentative Subdivision Map for the Ralston Village Phase II) for separate consideration.

Items Approved on Consent Calendar

Acceptance of Belmont Library/Belameda Park Project - November Monthly Update

Acceptance of Police Department/City Hall Project - November Monthly Update

Acceptance of Written Communication: 1) received November 4, 2005, from Golden State Water Company, Notice of filing of 2005 Annual Report with the California Public Utilities Commission; 2) Letter dated November 8, 2005, from San Mateo County Health Department regarding water fluoridation.

Approval of Resolution 9718 Amending the Joint Powers Agreement (JPA) Establishing the Criminal Justice Council of San Mateo County, Terminating the JPA

Approval of Resolution 9719 Accepting Work, Approving As-Built Plans, and Authorization to Issue a Notice of Substantial Completion for the Sanitary Sewer Construction and Modifications - Lyall Way, JMB Construction, Inc., City Contract Number 465

Approval of Resolution 9720 Regarding Intention to Issue Tax-Exempt Sewer Revenue Bonds (Reimbursement Resolution)

Approval of Resolution 9721 Honoring Lynn Hanlon upon her retirement.

Approval of Resolution 9722 Honoring Police Officer Derrick G. Lee upon his retirement.

ACTION: On a motion by Councilmember Feierbach, seconded by Councilmember Mathewson, the Consent Agenda was unanimously approved, as amended, by a show of hands.

Resolution Denying a General Plan Amendment, Conceptual Development Plan Amendment, and Vesting Tentative Subdivision Map for the Ralston Village Phase II

Councilmember Bauer stated that he was disappointed that after the applicant worked with the neighbors for four years, this project would not be moving forward.

ACTION: On a motion by Councilmember Bauer, seconded by Councilmember Mathewson, Resolution 9723 Denying a General Plan Amendment, Conceptual Development Plan Amendment, and Vesting Tentative Subdivision Map for the Ralston Village Phase II was unanimously approved by a show of hands.

HEARINGS

Public Hearing to consider amendments to Municipal Code Chapter 5 regarding the regulation, keeping, and maintenance of Pygmy Goats

Contract Planner Ouse reviewed the proposed amendments to Chapter 5 of the Municipal Code, which would permit the keeping of pygmy goats. She reviewed the zoning districts where goats will be permitted, and the conditions for the issuance of a permit. She noted that a variance of the setback requirements set forth in the conditions may be granted if approved by an adjacent property owner, and if desired by Council, language could be incorporated to require that any subsequent owners of those adjacent properties also agree to the setback variance, in order to perpetuate the variance.

Contract Planner Ouse stated that these proposed regulations exempts pygmy goats from existing regulations relative to the prohibition of livestock. She also reviewed the grandfathering of existing pygmy goat owners.

In response to Council questions, Contract Planner Ouse clarified that a permit fee had not yet been established. She clarified that the animal pen required a roof. She noted that the maximum number of two goats per property addresses the issue of females lent out for breeding purposes. She clarified that enforcement would be complaint-based. She stated the proposed requirement of a solid fence addressed privacy issues, but could be eliminated if desired. She noted this requirement is not in place for other animals. She clarified that the proposed limitation of one permit per 1,000 feet was based on a desire to prohibit an over-concentration of animals, but not on any scientific formula.

Mayor Warden suggested limiting the total number of permits rather than using the 1,000 feet formula.

Mayor Warden opened the Public Hearing.

Kevin Marr, Monserat Avenue, stated that the requirement for neutered males eliminates any concern regarding females escaping and becoming impregnated. He supports the 1,000-foot formula for the issuance of permits, but expressed concern regarding the 20 square feet per goat requirement. He noted this is very small and should be increased. He recommended that the smallest enclosure should be 20 feet by 20 feet, and a smaller enclosure at night is adequate.

In response to Council questions, Mr. Marr clarified that an enclosure provides safety for the pygmy goats, since they are defenseless against other animals. He recommended the fence height be raised from the proposed four feet to five feet, since goats can jump. He clarified that his goats are acclimated to people, and are domesticated, not wild.

ACTION: On a motion by Councilmember Bauer, seconded by Councilmember Metropulos, the Public Hearing was unanimously closed by a show of hands.

Councilmember Metropulos stated he contacted a breeder in Oregon, who confirmed that pygmy goats are considered pets, not livestock. The breeder advised there have been no problems with these animals in Oregon. Councilmember Metropulos added that Mr. Marr has taken good care of his goats, and Council has received no negative letters. He is in favor of the amendments.

Councilmember Mathewson stated that he was not fully supportive of this ordinance, but if approved, he recommended a one-year review. He noted that he does not question Mr. Marr's level of care, but expressed concern regarding other potential goat owners.

Councilmember Bauer expressed support for the limit of number of permits as opposed to distance. He recommended using Mr. Marr as a consultant if other issues arise. He is in favor of the ordinance.

Mayor Warden stated he supports this ordinance. He noted it is expensive to keep pygmy goats, and therefore is not concerned that there will be too many permit requests. He supports the elimination of the 1,000-foot radius and instead using a maximum of 20 permits. He also supports a one-year review.

Discussion ensued, and Council concurred to increase the size of the enclosure to 100 square feet, and to increase the fence height to five feet.

ACTION: On a motion by Councilmember Metropulos, seconded by Councilmember Bauer, and unanimously approved by a show of hands to introduce an ordinance by title amending Municipal Code Chapter 5 regarding the regulation, keeping, and maintenance of Pygmy Goats, said ordinance amended to include a maximum number of 20 permits, and requiring a minimum pen enclosure size of 100 square feet, and a one-year review, setting the second reading and adoption for December 13, 2005.

PUBLIC HEARING TO CONSIDER AN APPEAL OF THE PLANNING COMMISSION DECISION DENYING A FLOOR AREA VARIANCE AND SINGLE-FAMILY DESIGN REVIEW FOR 49 RALSTON RANCH ROAD.

Community Development Director de Melo advised that the applicant has requested a continuance of this matter. He noted this would be scheduled for the Council meeting on January 24, 2006.

Mayor Warden opened the Hearing. No one came forward to speak.

ACTION: On a motion by Councilmember Bauer, seconded by Councilmember Metropulos, the Public Hearing was unanimously closed by a show of hands.

Community Development Director de Melo clarified that since there would be so much time between tonight's hearing and the continuation date, the matter would be re-noticed.

ACTION: On a motion by Councilmember Bauer, seconded by Councilmember Metropulos, the Public Hearing was unanimously continued to January 24, 2006, by a show of hands

OLD BUSINESS

Resolution Adopting Non-Exclusive Cable Franchise Agreement with Comcast of California IX, Inc.

SAMCAT (San Mateo County Communications Authority) Attorney Rubens stated that this issue has been in negotiations for three years. He reviewed the provisions of the proposed 15-year agreement, and indicated that additional costs would be passed on to subscribers. He reviewed the benefits of technology for schools and emergency communication services. He explained the financing package, which was reviewed and approved by the Finance Commission. He outlined the changes and formatting issues that were lost in the email exchange of documents.

In response to Council questions, SAMCAT Attorney Rubens clarified that the right-of-way is mostly built-out, but some incidental access may be required, which the City can regulate. He noted most of the existing infrastructure is aerial. He stated that the agreement regulates additional structures, and is not unlimited. He noted the agreement is nonexclusive, and the costs are front-loaded. Franchise agreement funds received by the City are restricted.

Information Services Manager Harnish expressed her support for the agreement, as proposed.

Councilmember Mathewson noted that not all schools were included in the list of public buildings with access. Information Services Manager Harnish responded that specific locations were chosen based on need, but the list can be edited, and tradeoffs in locations can be made as desired. She clarified that the City has 60 days to make adjustments.

ACTION: On a motion by Councilmember Mathewson, seconded by Councilmember Bauer, Resolution 9724, Adopting Non-Exclusive Cable Franchise Agreement with Comcast of California IX, Inc., as amended to include formatting changes as noted, and with to include more schools, as discussed, was unanimously approved by a show of hands.

MEETING EXTENSION: At this time, being 10:25 P.M. on a motion by Councilmember Mathewson, seconded by Councilmember Feierbach, the meeting was unanimously extended by one hour by a show of hands.

NEW BUSINESS

Request for a Permanent Encroachment Agreement for Constructing a Fence and Retaining Wall within the Public Right-of-Way at 1570 Winding Way (APN 044-123-330)

Public Works Director Davis stated that a stop work notice was issued when it was noted that work had commenced in the right-of-way on this property. At that time, staff could find no public benefit to recommend approval of an encroachment agreement, since the only benefit is to the property owner. He noted that since that time, the scope of the project was changed, but staff still cannot find a public benefit. He recommended the elimination of a retaining wall, and that a drainage system be installed.

In response to Council questions, Public Works Director Davis stated that no pictures exist to indicate the condition of the property prior to the commencement of the work. The parking pad is not addressed in the application. He clarified that the aerial photographs may not exactly depict boundary lines, but noted the applicant's driveway is located within the right-of way. He noted that a permanent encroachment agreement is not required for driveways.

Public Works Director Davis also noted that options exist to address the drainage issue, which is being addressed by this application. Other recent encroachment applications were to replace retaining walls to hold back dirt, which is different from this application. The issue in this request is the proposed fence, which enlarges the front yard and increases the amount of property available for use by the property owner.

Robert Vinay, applicant, stated that the parking pad was installed in 1960, and that the fence was always there, he was simply replacing it. He noted that he was adding a drainage system.

Sharon Vinay, applicant, stated that the drainage problem is undermining the foundation of the home, and water currently drains into the neighbor's yard. She noted that they have attempted to locate documentation on the existing easement, which either does not exist or cannot be located. She stated that the public benefit is maintenance of the parking pad and aesthetics. She noted the area of concern is not large. She noted that the easement approaches the front door of their home.

In response to Council questions, Mr. Vinay responded that their desire is to have the property in the same condition it was prior to the commencement of work, and he is willing to restore the property to that condition. He noted the fence could act as a retaining wall, and he is willing to reduce the height.

Mrs. Viney responded that their contractor had a permit for the work, and a permit fee had been paid. All requests of the Public Works Department had been complied with. She noted this is an issue for other property owners in the area. She added that they have a pride of ownership.

In response to Council questions, Public Works Director Davis stated that other properties on Winding Way might have this same issue in the future. One option is to vacate right-of-way.

Councilmember Bauer stated that the existing condition of the property constitutes blight and is a hazard, and there is a benefit to correct. He appreciates staff's perspective, but noted that this issue should be addressed for other property owners, since the resolution is onerous.

Mayor Warden stated he could not support a six-foot fence, but supports correction of an undesirable physical condition. Councilmember Metropulos concurred.

ACTION: On a motion by Councilmember Feierbach, seconded by Councilmember Bauer, and unanimously approved by a show of hands a Permanent Encroachment Agreement for Constructing a Fence and Retaining Wall within the Public Right-of-Way at 1570 Winding Way (APN 044-123-330), amended to include a maximum fence height of four-and-a-half feet.

Public Works Director Davis noted that a resolution of approval would be placed on the next Council agenda.

Resolution Approving the First Amended and Restated Joint Exercise of Powers Agreement of the South Bayside Waste Management Authority

City Engineer Phalen stated that the City of Belmont entered into the Joint Powers Authority in 1999. A number of changes were being proposed to the Authority in order to better manage and streamline operations. She reviewed the governing structure, and noted that the recommendation is to hire an Executive Director to take on management and administrative duties. She noted the issue of the composition of the Board of Directors is not addressed with the proposed amendment. Only three member agencies, the City of Belmont included, support the option of having an elected official sit as its representative to the Board. She clarified that a two-thirds vote was required to include this option in the amendments to the Agreement.

City Engineer Phalen summarized the proposed changes to the Agreement. She noted there is no fiscal impact to the City of Belmont with this amendment, but there is to the Authority. She reviewed alternatives, and noted that the City of San Carlos and the Town of Atherton have already approved the amendment. In response to Councilmember Feierbach, City Engineer Phalen clarified that current oversight of operations is handled by the City of San Carlos, since it was instrumental in forming the Authority, and the Transfer Station is located within its boundaries.

Councilmember Feierbach expressed concern regarding costs for a Finance Director, and she supports the option to have an elected official sit as a member of the Board, if desired by the member agency. She also expressed concern that a four-fifths vote of the Authority Board is required in order for a member to withdraw from the Authority, and would prefer that a member agency have the ability to give a 30-day notice and pay any outstanding obligations in order to withdraw.

Councilmember Bauer stated this Authority oversees public dollars, and expressed concern that there is no option for an elected official to sit as a Board member. He noted that the amendments are better than the existing Agreement.

Mayor Warden stated that oversight is needed on the budget, not the operations, which could be accomplished by allowing member cities to have an elected official sit on the Board. He cannot support the amendment as proposed.

Council concurred with the need for elected official oversight on the budget.

Councilmember Mathewson noted that Council takes the blame for rate increases but has no say in budget matters at the Authority.

City Manager Crist recommended that Council consider voting against the amendment, and include its reasons for doing so. He noted that changes are already being implemented at the Authority. He concurred that an Executive Director is needed for its \$30 million budget. He noted that only a minority of the member agencies desire to change the governance structure.

Mayor Warden stated that the City of Belmont sent letters to all member agencies to obtain support for the governance issue.

Councilmember Bauer stated that he sits as a member of the League of California Cities' Environmental Committee, and this issue has been a subject of discussion.

Mayor Warden noted that the County Library Budget requires an annual review by the Board of Supervisors.

ACTION: On a motion by Councilmember Feierbach, seconded by Councilmember Mathewson, Resolution 9725 Denying the First Amended and Restated Joint Exercise of Powers Agreement of the South Bayside Waste Management Authority, was unanimously approved by a show of hands; said denial to include the following reasons: 1) eliminate 4/5 vote requirement to withdraw from Authority and allow a 30-day withdrawal notification; 2) allow member agencies to select an elected official to serve as a Board member; 3) Board of Supervisors oversight requirement on annual budget.

MEETING EXTENSION: At this time, being 11:30 P.M. on a motion by Councilmember Mathewson, seconded by Councilmember Metropulos, the meeting was unanimously extended by a half-hour by a show of hands.

COMMISSION, COMMITTEE, AND COUNCIL INTERGOVERNMENTAL ASSIGNMENT UPDATES, AND STAFF ITEMS

Discussion and Direction Regarding Options for Planning Commission Vacancy

City Attorney Zafferano reviewed the four options available to address the vacancy created by the pending resignation of Commissioner Dickenson due to his election to the City Council.

Community Development Director de Melo noted that the first January Planning Commission has been cancelled. Four meetings will be affected by the reduced number of Commissioners prior to the appointment of a replacement during the normal appointment process.

Councilmember Mathewson stated he supports Option 1 (do nothing and appoint a replacement during the next application process), since an even number of Commissioners for a short time is not a concern.

Councilmember Metropulos stated that he would support Option 4 to reduce the number of Commissioners permanently to five. He expressed concern regarding potential tie votes. He would support the removal of a member in order to affect this change.

Councilmember Feierbach recommended the appointment of Jeff Marshall, a previous applicant.

Councilmember Bauer expressed support for Councilmember Mathewson's recommendation.

Mayor Warden stated that an odd number of Commissioners is ideal. He supported filling the vacancy, and stated he could support Mr. Marshall's appointment and could also support reducing the number of Commissioners to five.

Councilmember Metropulos stated he could support Mr. Marshall's appointment.

ACTION: On a motion by Councilmember Feierbach, seconded by Councilmember Metropulos, and unanimously approved by a show of hands to appoint Jeff Marshall to fill the remaining term of outgoing Commissioner Dickenson.

Discussion and Direction on Future Calendar Setting Process

Interim Assistant City Manager Gonzalez recommended that the Council modify the Priority Calendar process to tie it to the fiscal year and the budget cycle. She reviewed the proposed modifications, and noted that other processes associated with the Priority Calendar would continue.

Councilmember Bauer stated that it makes sense to tie the Priority Calendar to the fiscal year.

Mayor Warden expressed concern that an annual review would take too long to process issues raised during the year, and would prefer to keep it at twice annually. He is willing to support the proposal, but would like flexibility, and recommended increasing the hourly threshold from 20 to 40 hours for new items.

Council concurred to implement the Priority Calendar process change as proposed, and to increase the threshold of new items from 20 to 40 hours.

MATTERS OF COUNCIL INTEREST/CLARIFICATION

Consideration of review of policy of City Commissions (Feierbach)

Councilmember Feierbach stated that she would recommend that the Council consider changing the method by which Finance Commissioners are selected, to conform to the method used for all other Commissions. She also stated the Finance Commission should meet in the Council Chambers and should record their meetings. She stated that now that a former Finance Commissioner has been elected to City Council, the Finance Commission is now a political body. She added that at one time Finance Commissioners and candidates were told that if they ever wanted to run for City Council, they should not apply.

Council concurred to place this item on a future agenda for discussion.

Discussion regarding timing of initiation of recruitments for permanent Parks & Recreation Director and Human Resources Director (Warden)

Mayor Warden requested that the Interim City Manager be directed to begin the process for filling the Parks and Recreation and Human Resources Director positions, and not wait for a new City Manager.

Interim City Manager Crist stated that he would prefer not to make the final decision, but he would be willing to start the process if desired by Council. He noted that he could request that the recruitment firm handling the City Manager position add these two positions to its list, and begin that recruitment in January. The new City Manager could participate in the final selection.

Council concurred to begin the recruitment process, as described.

ADJOURNMENT at this time, being midnight, in memory of Former City Councilmembers Robert Fitzgerald and Pam Ketcham.

Terri Cook
Belmont City Clerk

Meeting Tape Recorded and Videotaped
Audio Recording 622
Minutes approved 1/10/2006